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**SEP 19 2005**

**OFFICE OF PETITIONS**

In re Patent No. 6,902,640	:	
Yamaguchi et al.	:	DECISION ON REQUEST
Issue Date: June 7, 2005	:	FOR
Application No. 10/032,741	:	RECONSIDERATION OF
Filed: October 22, 2001	:	PATENT TERM ADJUSTMENT
Title: METHOD FOR MANUFACTURING A	:	
BELT	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.702(b) and 1.705(d)," filed May 27, 2005. Patentees request that the patent term adjustment indicated in the patent be corrected from one hundred thirty-eight (138) days to two hundred twenty-eight (228) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **DISMISSED**.

Patentees are given **TWO (2) MONTHS** from the mailing date of this decision to respond. No extensions of time will be granted under § 1.136.

On June 7, 2005, the above-identified application matured into U.S. Patent No. 6,902,640. The instant request for reconsideration filed May 27, 2005 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a Patent Term Adjustment of 138 days. Patentees request correction of the patent term adjustment to increase the patent term adjustment to 228 days on the basis

that the patent issued 3 years and 228 days after the date on which the application was filed.

It is agreed that the instant patent issued 3 years and 228 days after its filing date. However, § 1.703(b)(1) provides, in pertinent part that:

the period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) ... and ending on the date a patent was issued, but not including the sum of the following periods:

(1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

Thus, the filing of a request for continued examination (RCE) cuts-off the applicants' ability to accumulate any additional patent term adjustment against the three-year pendency provision, but does not otherwise affect patent term adjustment.

In this instance, a RCE was filed on November 15, 2004. Thus, the ability to accumulate additional patent term adjustment against the three-year pendency provision ended November 14, 2004. Accordingly, the period of adjustment under § 1.702(b) is 23 days, counting the number of days beginning on October 23, 2004 and ending on November 14, 2004.

Moreover, if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also Revision of Patent Term Extension and Patent Term Adjustment Provisions;

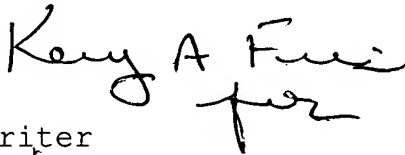
Final Rule, 69 Fed. Reg. 21704 (April 22, 2004). In this instance, the period of delay of 138 days attributable to grounds specified in § 1.702(a)(1) and (2) overlaps with the 23 days attributable to the delay in the issuance of the patent. Thus, the period of adjustment cannot exceed the actual number of days of delay of 138 days.

In view thereof, the patent properly issued with a patent term adjustment of 138 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being returned to Files Repository for storage as a patented file.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Karin A. Ferriter" with a stylized flourish at the end.

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